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2 SUPREME COURT OF THE STATE OF NEW YORK
3 COUNTY OF QUEENS

4 -----X

5 ANNA THOMAS,

6

PLAINTIFF,

7

-against-

Index No:
20767/07

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9 CIRCUIT CITY STORES, INC., "JOHN DOES",
10 said named being fictitious and is intended
11 to represent the unknown employees of the
12 defendant.

13

DEFENDANTS.

14 -----X

15 DATE: April 4, 2008

16 TIME: 10:30 a.m.

17

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19 EXAMINATION BEFORE TRIAL of the

20 Plaintiff, ANNA THOMAS, taken by the Defendant,

21 pursuant to a Court Order, held at the offices

22 of SHAEVITZ & SHAEVITZ, ESQS., 148-55 Hillside

23 Avenue, Jamaica, New York, before a Notary

24 Public of the State of New York.

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2 A P P E A R A N C E S:

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4 SHAEVITZ & SHAEVITZ, ESQS.
Attorneys for the Plaintiff
5 148-55 Hillside Avenue
Jamaica, New York 11435

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BY: STUART SEARS, ESQ.

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9 RENDE, RYAN & DOWNES, LLP
Attorneys for the Defendant
10 CIRCUIT CITY STORES, INC.
202 Mamaroneck Avenue
11 White Plains, New York 10601

12 BY: CHRISTOPHER J. WHITTON, ESQ.
File #: S-125

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15 ALSO PRESENT:

16 ELLIE KOTEAS, GREEK INTERPRETER

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**221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS**

221.1 Objections at Depositions

(a) **Objections in general.** No objections shall be made at a deposition except those which, pursuant to subdivision (b), (c) or (d) of Rule 3115 of the Civil Practice Law and Rules, would be waived if not interposed, and except in compliance with subdivision (e) of such rule. All objections made at a deposition shall be noted by the officer before whom the deposition is taken, and the answer shall be given and the deposition shall proceed subject to the objections and to the right of a person to apply for appropriate relief pursuant to Article 31 of the CPLR.

(b) **Speaking objections restricted.**

Every objection raised during a deposition shall be stated succinctly and framed so as not to suggest an answer to the deponent and, at the request of the questioning attorney, shall include a clear statement as to any defect in form or other basis of error or irregularity. Except to the extent permitted by CPLR Rule 3115 or by this rule, during the course of the examination persons in attendance shall not make statements or comments that interfere with the questioning.

221.2 Refusal to answer when objection is made

A deponent shall answer all questions at a deposition, except (i) to preserve a privilege or right of confidentiality, (ii) to enforce a limitation set forth in an order of the court, or (iii) when the question is plainly improper and would, if answered, cause significant prejudice to any person. An attorney shall not direct a deponent not to answer except as provided in CPLR Rule 3115 or this subdivision. Any refusal to answer or direction not to answer shall be accompanied by a succinct and clear statement of the basis therefor. If the deponent does not answer a question, the examining party shall have the right to complete the remainder of the deposition.

221. UNIFORM RULES FOR THE
CONDUCT OF DEPOSITIONS

221.3 Communication with the deponent

An attorney shall not interrupt the deposition for the purpose of communicating with the deponent unless all parties consent or the communication is made for the purpose of determining whether the question should not be answered on the grounds set forth in section 221.2 of these rules and, in such event, the reason for the communication shall be stated for the record succinctly and clearly.

IT IS FURTHER STIPULATED AND AGREED that the transcript may be signed before any Notary Public with the same force and effect as if signed before a clerk or a Judge of the court.

IT IS FURTHER STIPULATED AND AGREED that the examination before trial may be utilized for all purposes as provided by the CPLR.

IT IS FURTHER STIPULATED AND AGREED that all rights provided to all parties by the CPLR cannot be deemed waived and the appropriate sections of the CPLR shall be controlling with respect hereto.

IT IS FURTHER STIPULATED AND AGREED by and between the attorneys for the respective parties hereto that a copy of this examination shall be furnished, without charge, to the attorneys representing the witness testifying herein.

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2 E L L I E K O T E A S ,

3 a Greek interpreter, solemnly swore to
4 translate the following questions from
5 English to Greek and answers from Greek to
6 English:

7

8 A N N A T H O M A S ,

9 called as a witness, having been first duly
10 sworn, through an interpreter, by a Notary
11 Public of the State of New York, was
12 examined and testified as follows:

13

14 EXAMINATION BY

15 MR. WHITTON

16 Q. Please state your name for the
17 record.

18 A. Anna Thomas.

19 Q. Where do you reside?

20 A. 99-10 60th Avenue, Apartment 5J,
21 Corona, New York 11368.

22 Q. Good morning, ma'am. My name is
23 Christopher Whitton. I represent Circuit City.

24 I'm going to have some questions
25 for you today.

1 Thomas

2 A. Okay.

3 Q. Before we begin just some ground
4 rules. Please, wait for me to fully ask my
5 question and for the interpreter to interpret
6 it before you respond.

7 A. Until you finish the questions.

8 Q. Very good.

9 If you don't understand the
10 question, will you, please, tell me?

11 A. Okay.

12 Q. The address that you provided in
13 Corona, how long have you lived there?

14 A. Thirty-six years.

15 Q. Presently, do you live there with
16 anyone?

17 A. With my husband and son.

18 Q. What is your husband's name?

19 A. Raymond Thomas.

20 Q. Your son, what is his name and
21 approximate age?

22 A. Tony Thomas.

23 Q. Tony?

24 A. Thomas.

25 Q. How old is Tony?

1 Thomas

2 A. Forty-three.

3 Q. Back in December of 2006, was your
4 husband and son living with you at that
5 address?

6 A. Yes.

7 Q. Ma'am, do you work right now out of
8 the home?

9 A. No. I'm on pension.

10 Q. When was the last time you worked
11 outside of the home?

12 A. In 1996 I worked in a bank,
13 Crossland Savings in accounting in Brooklyn.

14 Q. It was in the accounting department
15 that you worked?

16 A. Yes.

17 Q. How long did you work there at that
18 bank?

19 A. Ten years. Previously I worked at
20 a different bank. Wells Fargo in 40 Wall
21 Street that was 1972 up until 1988.

22 Q. And now you are retired collecting
23 a pension?

24 A. Yes.

25 Do you want to know how much?

1 Thomas

2 Q. No.

3 Thank you.

4 MR. SEARS: Just tell her she has
5 to worry about the questions.

6 MR. WHITTON: Off the record.

7 (Discussion held off the record.)

8 Q. You had an incident that occurred
9 back in December of 2006 that occurred at
10 Circuit City Stores; is that correct?

11 A. Yes. They injured me.

12 MR. WHITTON: Move to strike the
13 non-responsive portion.

14 Q. Do you remember what date that was?

15 A. I don't recall, but I have the
16 receipt from the stuff that I purchased which
17 might have the date.

18 Q. Were you there that day by yourself
19 or did you go with someone?

20 A. With my husband. We were shopping.

21 Q. Did you drive there or go by train
22 or something else?

23 A. By foot because we don't live far.

24 Q. Where is this store?

25 A. Queens Boulevard near Sears.

1 Thomas

2 Q. This is the Rego Park area?

3 A. Right.

4 Q. Before this day, had you ever been
5 inside that Circuit City?

6 A. No.

7 Q. So this was the first time you were
8 visiting the Rego Park Circuit City store?

9 A. It wasn't the first time. We had
10 previously purchased stuff, but that hadn't
11 happened to me.

12 Q. All I want to know is: Before the
13 day of this incident, had you ever visited this
14 Circuit City store?

15 A. No.

16 Q. Had you visited other Circuit City
17 Stores?

18 A. No. Because it's close to me.

19 Q. So is my understanding, right, that
20 before the day that you were hurt you had never
21 been to a Circuit City store?

22 A. No.

23 Q. How many times have you ever been
24 to a Circuit City store?

25 A. My husband used to buy, you know

1 Thomas

2 recorder. Stuff like that. I don't remember.
3 Sometimes he used to go by himself.

4 Q. Does the date December 28th, 2006
5 refresh your memory as the day of this
6 incident?

7 A. Yes.

8 I will never forget it because I'm
9 in pain.

10 MR. WHITTON: Move to strike the
11 non-responsive portions.

12 Q. Before December 28th, 2006, did you
13 ever go to the Rego Park Circuit City store?

14 A. No.

15 Q. Do you remember what time you got
16 to the Circuit City store on December 28th,
17 2006?

18 A. Around two, to 2:30 because it was
19 a nice, sunny day, so we decided to walk up
20 there.

21 Q. What was the reason why you were
22 going to the store?

23 A. My husband, he buy -- I'm sorry.
24 My husband has a small recorder from there and
25 I wanted to purchase a recorder for my

1 Thomas

2 daughter-in-law's baby. A little one. Just
3 like that (indicating).

4 Q. How many children do you have?

5 A. I have four. Four boys.

6 Q. Do they live in the area?

7 A. No. One of my sons is married in
8 California. My other son is married in
9 Georgia. Then -- George lives in Bayside and
10 Antonio, the younger one, lives with me.

11 Q. Do you know if your son --

12 A. Because he's disabled.

13 Q. Tony is disabled?

14 A. Yes.

15 Q. Do you know if your son, Tony, had
16 ever been to this Circuit City store?

17 A. No.

18 Q. Your son, George, has he ever been
19 to this Circuit City store?

20 A. I have no idea because -- I don't
21 know because he does not live with me. He
22 shops at Best Buy. I don't know. I don't get
23 involved in what they buy.

24 Q. When you arrived at the Circuit
25 City store this day, did you speak with anyone

1 Thomas

2 that worked there?

3 A. No. We -- only at the cashier
4 where we paid.

5 Q. When you paid for the things that
6 you were buying, was that before this incident
7 or after this incident?

8 A. Before. Prior to getting injured.

9 Q. During the time that you were
10 shopping in the store before this incident, did
11 you observe any commotions going on?

12 A. I didn't notice because we just buy
13 and then we leave.

14 Q. When you went to pay for the things
15 you were buying, was that at the front counter
16 towards the entrance of the store?

17 A. No. It was in the back because it
18 was empty.

19 Q. Can you describe for me where in
20 the back the counter was that you purchased
21 your items at?

22 A. Well, I went this way to the -- I
23 went this way to go to the door and my husband
24 was walking in front of me and it was at this
25 point that they pushed me and I knocked into

1 Thomas

2 that metal shelf, but luckily there were no
3 computers on the shelf to fall and kill me
4 (indicating).

5 MR. WHITTON: Move to strike the
6 non-responsive portions.

7 Q. The counter where you bought the
8 items, was that in the back of the store?

9 A. Yes.

10 Q. If you were standing at the
11 entrance to the store looking into the store,
12 would this counter be in the back towards the
13 right side, the middle side or the left side?

14 A. In the back on the right side. It
15 was empty over there, so we said let's just,
16 you know, get it over with so we can go eat I
17 said to my husband.

18 Q. After you purchased these items,
19 you and your husband began walking together to
20 leave?

21 A. No. My husband was here in the
22 front. I was over here behind my husband and
23 we were going like so we can enter from the
24 door.

25 Q. Were you following your husband?

1 Thomas

2 A. Yes. Yes.

3 Q. Were you and your husband walking
4 down the same aisle after you purchased but
5 before the incident?

6 A. The same.

7 Q. How far ahead was your husband from
8 you when this incident happened?

9 A. I was over here and my husband was
10 over here (indicating) but luckily my husband
11 didn't get hit because if he did they would
12 have killed him because he has heart condition.
13 In my case I got hit, but I was able to
14 tolerate the pain. I don't have heart trouble.

15 MR. WHITTON: Move to strike the
16 non-responsive portion.

17 Q. Listen to my question.

18 While walking down the aisle, how
19 far was your husband ahead of you before this
20 incident happened?

21 A. He was way ahead of me. I was over
22 here, but they hit me over here (indicating).
23 I thought it was an earthquake.

24 MR. SEARS: If you could, tell her
25 to answer the question that is asked.

1 Thomas

2 MR. WHITTON: Move to strike the
3 non-responsive portion.

4 Q. I'm going to give you a chance to
5 tell me the whole story.

6 A. Okay.

7 Q. But to have a nice reading record,
8 I want to do it one step at a time.

9 A. I understand.

10 Q. You and your husband were walking
11 toward the front of the store to leave, right?

12 A. Yes.

13 Q. At some point you were knocked
14 down, right?

15 A. Yes.

16 Q. Did you see what happened to you
17 before you were knocked down?

18 A. Well, I was walking in order to
19 leave. I didn't know they were going to hit
20 me.

21 Q. Did you feel something first or did
22 you see it first?

23 A. I felt the strike when they pushed
24 me because you don't even push a dog like that.

25 MR. WHITTON: Move to strike the

1 Thomas

2 non-responsive portion.

3 Q. Where on you were you pushed?

4 A. (Indicating). They destroyed my
5 hand nerves.

6 MR. SEARS: If you can -- what part
7 of the body --

8 MR. WHITTON: Move to strike the
9 non-responsive portion.

10 THE WITNESS: All this
11 (indicating).

12 MR. SEARS: Would that be the right
13 arm?

14 THE WITNESS: The right one. Yes.

15 Q. Is it on your right arm that you
16 were pushed?

17 A. I was like this and in this
18 position as I was walking and they pushed me to
19 the wall and I'm still hurting on the metal.

20 Q. As you were walking, just before
21 you were pushed, what was on your right-hand
22 side, a wall or something else?

23 A. It was a metal wall. There were
24 things on it.

25 Q. What was on your left side as you

1 Thomas

2 were walking just before this incident?

3 A. There was nothing there. There was
4 nothing there, but they came suddenly because
5 they were chasing the thief.

6 MR. WHITTON: Move to strike the
7 non-responsive portions.

8 Q. On your left side, at some point
9 was there a counter or display or something
10 else?

11 A. I think there were. I just buy my
12 stuff and I want to leave and go eat.

13 Q. You said you think there were.
14 My question is were what, counters?

15 A. Where I got injured?

16 Q. No.

17 When you were walking and you had
18 the metal wall to your right side, what was on
19 the left side of you?

20 A. I'm assuming there was stuff there,
21 but I didn't really observe.

22 Q. I don't want you to guess. If you
23 don't recall then you just say so.

24 A. I didn't notice.

25 Q. The first moment that you felt a

1 Thomas

2 push, what part of your body was touched?

3 A. My hand (indicating).

4 Q. Were you touched on your entire
5 right arm and hand?

6 A. As I was pushed, I thought I got
7 scared for my head.

8 Q. When you were pushed, where on your
9 body were you pushed; your back, your arm, your
10 head or somewhere else?

11 A. The entire hand starting from here
12 and even up until now I'm in pain and it
13 reaches elsewhere, too (indicating).

14 MR. WHITTON: First, move to strike
15 the non-responsive portions.

16 Let the record reflect the witness
17 indicated her right arm and shoulder
18 area.

19 Q. When you were pushed, what happened
20 to you?

21 A. I fell down and I was screaming.

22 Q. When you fell down, did you fall
23 forward or to a side or something else?

24 A. I fell on my right side and then I
25 was yelling to my husband, help, help. They

1 Thomas

2 injured me.

3 MR. WHITTON: Move to strike the
4 non-responsive portions.

5 Q. Was it one person or more than one
6 person that was by you when you were pushed and
7 fell?

8 A. I'm assuming it was more than one
9 person because of the way they hit me and then
10 they were chasing after the thief and they left
11 me there like a dog.

12 MR. WHITTON: Move to strike the
13 non-responsive portion.

14 Q. Did you see any of these people
15 before you fell on your right side?

16 A. No. They came suddenly running
17 like horses.

18 Q. Did you ever learn where they came
19 from?

20 A. From the store.

21 Q. Did you ever learn where in the
22 store they came from?

23 A. No.

24 Q. After you had fallen down, did you
25 get a chance to see the people that were

1 Thomas

2 running?

3 A. No because they continued running
4 after the thief from that side, the right side.

5 Q. Your right side?

6 A. No.

7 I mean from the back of me. They
8 went like this (indicating) because I said, you
9 know, my husband hold me up and they gave me
10 chair and then they brought me a glass of
11 water.

12 MR. WHITTON: Read it back.

13 (Whereupon, the referred to answer
14 was read back by the Reporter.)

15 Q. When you said they went like this,
16 were these people going up a different aisle
17 past you?

18 A. I was over here and they were
19 running to get that thief, the lady who was
20 next to me.

21 Q. Did the people that went running to
22 get this lady, did they run past you or did
23 they go down a different aisle?

24 A. Same -- yes. The same aisle.

25 Q. The first person was this lady

1 Thomas

2 thief; is that right?

3 A. They told me afterwards about it
4 when the police came and they put the lady in
5 prison.

6 Q. Did you see the female thief at any
7 time?

8 A. No. I didn't see her, but when
9 they took me to this little room -- the police
10 took me there she was in a little room and they
11 were asking her questions. I don't know
12 otherwise. I really didn't want to see her.

13 Q. How many people did you see chasing
14 the thief?

15 A. Well, I don't know because as they
16 hit me they continued to run after her, but I
17 don't know how many people, but I know it
18 was -- it was like a strong hit.

19 Q. You did not see who actually hit,
20 is that right?

21 A. I didn't see their faces because I
22 had fallen down.

23 MR. WHITTON: Could you read two
24 answers back the question and answer.

25 (Whereupon, the referred to